

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 576

Introduced by Redfield, 12; Mines, 18

Read first time January 18, 2005

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.02, 77-2701.24, 77-2701.32, 77-2704.26,
3 77-2704.30, and 77-2704.46, Reissue Revised Statutes of
4 Nebraska, and sections 77-2701, 77-2701.04, 77-2701.10,
5 77-2701.16, 77-2701.45, and 77-2703, Revised Statutes
6 Supplement, 2004; to change the sales tax rate; to tax
7 certain services; to eliminate certain exemptions; to
8 harmonize provisions; to provide an operative date; to
9 repeal the original sections; and to outright repeal
10 sections 77-2704.03, 77-2704.04, 77-2704.07, 77-2704.10,
11 77-2704.13, 77-2704.14, 77-2704.16, 77-2704.17,
12 77-2704.19, 77-2704.20, 77-2704.23, 77-2704.25,
13 77-2704.27, 77-2704.38, 77-2704.40, and 77-2704.50,
14 Reissue Revised Statutes of Nebraska, and sections
15 77-2704.12, 77-2704.15, 77-2704.36, 77-2704.37, and
16 77-2704.55, Revised Statutes Supplement, 2004.
17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement,
2 2004, is amended to read:

3 77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222
4 and section 13 of this act shall be known and may be cited as the
5 Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.02, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-2701.02. Pursuant to section 77-2715.01:

9 (1) Until July 1, 1998, the rate of the sales tax levied
10 pursuant to section 77-2703 shall be five percent;

11 (2) Commencing July 1, 1998, and until July 1, 1999, the
12 rate of the sales tax levied pursuant to section 77-2703 shall be
13 four and one-half percent;

14 (3) Commencing July 1, 1999, and until ~~the start of the~~
15 ~~first calendar quarter after July 20, 2002~~ January 1, 2006, the
16 rate of the sales tax levied pursuant to section 77-2703 shall be
17 five percent; and

18 (4) Commencing on ~~the start of the first calendar quarter~~
19 ~~after July 20, 2002~~ January 1, 2006, the rate of the sales tax
20 levied pursuant to section 77-2703 shall be ~~five and one-half~~ three
21 and seventy-five hundredths percent.

22 Sec. 3. Section 77-2701.04, Revised Statutes Supplement,
23 2004, is amended to read:

24 77-2701.04. For purposes of sections 77-2701.04 to
25 77-2713 and section 13 of this act, unless the context otherwise
26 requires, the definitions found in sections 77-2701.05 to
27 77-2701.45 shall be used.

28 Sec. 4. Section 77-2701.10, Revised Statutes Supplement,

1 2004, is amended to read:

2 77-2701.10. Contractor or repairperson means any person
3 who performs any repair services upon property annexed to, or who
4 annexes building materials to, real estate, including leased
5 property, and who, as a necessary and incidental part of performing
6 such services, annexes building materials to the real estate being
7 so repaired or annexed or arranges for such annexation. Contractor
8 or repairperson does not include any person who incorporates live
9 plants into real estate except when such incorporation is
10 incidental to the transfer of an improvement upon real estate or
11 the real estate. The contractor or repairperson not electing to be
12 taxed as a retailer is considered to be the consumer of such
13 building materials furnished by him or her and annexed to the real
14 estate being so repaired or annexed for all the purposes of the
15 Nebraska Revenue Act of 1967. The contractor or repairperson:

16 (1) Shall be permitted to make an election that he or she
17 will be taxed as a retailer in which case he or she shall not be
18 considered the final consumer of building materials annexed to real
19 estate;

20 (2) Shall be permitted to make an election that he or she
21 will be taxed as the consumer of building materials annexed to real
22 estate, will pay the sales tax or remit the use tax at the time of
23 purchase, and will maintain a tax-paid inventory; or

24 (3) Shall be permitted to make an election that he or she
25 will be taxed as the consumer of building materials annexed to real
26 estate and may issue a resale certificate when purchasing building
27 materials that will be annexed to real estate. Such person shall
28 then remit the appropriate use tax on any building materials when

1 withdrawn from inventory for the purpose of being annexed to real
2 estate at the rate in effect at the time and place of the
3 withdrawal from inventory.

4 The contractor shall collect and remit the tax on his or
5 her gross receipts for labor in performing construction services as
6 payments are received. ~~except as provided in section 77-2704.55.~~

7 The provisions of this section shall not excuse any
8 person from the obligation to collect sales tax on retail sales of
9 property not annexed to real estate or from the obligation to pay
10 the sales tax or remit the use tax on tools, services, and other
11 materials consumed that are not annexed to real estate.

12 The Department of Revenue shall not prescribe any
13 requirements of Nebraska sales revenue, percentage or otherwise,
14 restricting any person's election. Any change in an election shall
15 require prior approval by the Tax Commissioner.

16 Any change in the election shall, if filed on or prior to
17 the fifteenth of the month, become effective at the beginning of
18 the following month or, if filed after the fifteenth of the month,
19 become effective on the first day of the next succeeding month.
20 Any person who changes his or her election and becomes a contractor
21 or repairperson shall pay the tax on all building materials in
22 inventory which may be annexed to real estate at the time of making
23 the change in election except when such contractor or repairperson
24 elects to purchase inventory with a resale certificate. Any person
25 who changes his or her election and becomes a retailer shall not be
26 entitled to a refund but shall receive a credit for the tax paid on
27 building materials in inventory at the time the building materials
28 are sold. The credit shall be applied against the tax collected on

1 sales of such building materials.

2 Any contractor or repairperson who has not completed and
3 filed an election as required in this section within three months
4 after beginning to operate as a contractor or repairperson shall be
5 considered a retailer for all periods until an election has been
6 made.

7 Sec. 5. Section 77-2701.16, Revised Statutes Supplement,
8 2004, is amended to read:

9 77-2701.16. (1) Gross receipts shall mean the total
10 amount of the sale or lease or rental price, as the case may be, of
11 the retail sales of retailers valued in money whether received in
12 money or otherwise, without any deduction on account of any of the
13 following:

14 (a) The cost of property sold. In accordance with rules
15 and regulations adopted and promulgated by the Tax Commissioner, a
16 deduction may be taken if the retailer has purchased property for
17 some purpose other than resale, has reimbursed his or her vendor
18 for tax which the vendor is required to pay to the state or has
19 paid the use tax with respect to the property, and has resold the
20 property prior to making any use of the property other than
21 retention, demonstration, or display while holding it for sale in
22 the regular course of business. If such a deduction is taken by
23 the retailer, no refund or credit will be allowed to his or her
24 vendor with respect to the sale of the property;

25 (b) The cost of the materials used, labor or service
26 costs, interest paid, losses, or any other expense;

27 (c) The cost of transportation of the property;

28 (d) The amount of any excise or property tax levied

1 against the property except as otherwise provided in the Nebraska
2 Revenue Act of 1967; or

3 (e) The amount charged for warranties, guarantees, or
4 maintenance agreements.

5 (2) Gross receipts of every person engaged as a public
6 utility specified in this subsection or as a community antenna
7 television service operator or any person involved in connecting
8 and installing services defined in subdivision (2)(a), (b), or (d)
9 of this section shall mean:

10 (a) In the furnishing of telephone communication service,
11 other than mobile telecommunications service as described in
12 section 77-2706.02, the gross income received from furnishing local
13 exchange telephone service and intrastate message toll telephone
14 service. In the furnishing of mobile telecommunications service as
15 described in section 77-2706.02, the gross income received from
16 furnishing mobile telecommunications service that originates and
17 terminates in the same state to a customer with a place of primary
18 use in Nebraska. Gross receipts shall not mean (i) the gross
19 income, including division of revenue, settlements, or carrier
20 access charges received on or after January 1, 1984, from the sale
21 of a telephone communication service to a communication service
22 provider for purposes of furnishing telephone communication service
23 or (ii) the gross income attributable to services rendered using a
24 prepaid telephone calling arrangement. For purposes of this
25 subdivision, a prepaid telephone calling arrangement shall mean the
26 right to exclusively purchase telecommunications service that is
27 paid for in advance that enables the origination of calls using an
28 access number or authorization code, whether manually or

1 electronically dialed;

2 (b) In the furnishing of telegraph service, the gross
3 income received from the furnishing of intrastate telegraph
4 services;

5 (c) In the furnishing of gas, electricity, sewer, and
6 water service except water used for irrigation of agricultural
7 lands and manufacturing purposes, the gross income received from
8 the furnishing of such services upon billings or statements
9 rendered to consumers for such utility services; and

10 (d) In the furnishing of community antenna television
11 service, the gross income received from the furnishing of such
12 community antenna television service as regulated under sections
13 18-2201 to 18-2205 or 23-383 to 23-388.

14 Gross receipts shall also mean gross income received from
15 the provision, installation, construction, servicing, or removal of
16 property used in conjunction with the furnishing, installing, or
17 connecting of any public utility services specified in subdivision
18 (2)(a) or (b) of this section or community antenna television
19 service specified in subdivision (2)(d) of this section. Gross
20 receipts shall not mean gross income received from telephone
21 directory advertising.

22 (3) Gross receipts of every person engaged in selling,
23 leasing, or otherwise providing intellectual or entertainment
24 property shall mean:

25 (a) In the furnishing of computer software, the gross
26 income received, including the charges for coding, punching, or
27 otherwise producing computer software and the charges for the
28 tapes, disks, punched cards, or other properties furnished by the

1 seller; and

2 (b) In the furnishing of videotapes, movie film,
3 satellite programming, satellite programming service, and satellite
4 television signal descrambling or decoding devices, the gross
5 income received from the license, franchise, or other method
6 establishing the charge except the gross income received from
7 videotape and film rentals, satellite programming, and satellite
8 programming service when the sales tax or the admission tax is
9 charged under the Nebraska Revenue Act of 1967 and except as
10 provided in section 77-2704.39.

11 (4) Gross receipts for providing a service shall mean:

12 (a) The gross income received for building cleaning and
13 maintenance, pest control, and security;

14 (b) The gross income received for motor vehicle washing,
15 waxing, towing, and painting;

16 (c) The gross income received for computer software
17 training;

18 (d) The gross income received for installing and applying
19 tangible personal property if the sale of the property is subject
20 to tax;

21 (e) The gross income received for labor by a contractor;
22 ~~except as provided in section 77-2704.55,~~

23 (f) The gross income received for services of
24 recreational vehicle parks;

25 (g) The gross income received for labor for repair or
26 maintenance services performed with regard to tangible personal
27 property the sale of which would be subject to sales and use taxes,
28 excluding motor vehicles, except as otherwise provided in

1 subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

2 (h) The gross income received for animal specialty
3 services except (i) veterinary services and (ii) specialty services
4 performed on livestock as defined in section 54-183; and

5 (i) The gross income received for detective services.

6 (5) Gross receipts shall not include any of the
7 following:

8 (a) Cash discounts allowed and taken on sales;

9 (b) The amount of any rebate granted by a motor vehicle
10 or motorboat manufacturer or dealer at the time of sale of the
11 motor vehicle or motorboat, which rebate functions as a discount
12 from the sales price of the motor vehicle or motorboat;

13 (c) Sales price of property or services returned or
14 rejected by customers when the full sales price is refunded either
15 in cash or credit;

16 (d) The amount charged for finance charges, carrying
17 charges, service charges, or interest from credit extended on sales
18 of property or services under contracts providing for deferred
19 payments of the purchase price if such charges are not used as a
20 means of avoiding imposition of the tax upon the actual sales price
21 of the property or services;

22 (e) The value of property taken by a seller in trade as
23 all or a part of the consideration for a sale of property of any
24 kind or nature;

25 (f) The value of a motor vehicle or motorboat taken by
26 any person in trade as all or a part of the consideration for a
27 sale of another motor vehicle or motorboat;

28 (g) Receipts from conditional sale contracts, installment

1 sale contracts, rentals, and leases executed in writing prior to
2 June 1, 1967, and with delivery of the property prior to June 1,
3 1967, if such conditional sale contracts, installment sale
4 contracts, rentals, or leases are for a fixed price and are not
5 subject to negotiation or alteration; or

6 (h) Except as provided in subsection (2) of this section,
7 until October 1, 2002, the amount charged for labor or services
8 rendered in installing or applying the property sold if such amount
9 is separately stated and such separate statement is not used as a
10 means of avoiding imposition of the tax upon the actual sales price
11 of the property.

12 (6) Subsections (1) through (6) of this section terminate
13 on January 1, 2004.

14 (7) Gross receipts means the total amount of the sale or
15 lease or rental price, as the case may be, of the retail sales of
16 retailers.

17 (8) Gross receipts of every person engaged as a public
18 utility specified in this subsection or as a community antenna
19 television service operator or any person involved in connecting
20 and installing services defined in subdivision (8)(a), (b), or (d)
21 of this section means:

22 (a)(i) In the furnishing of telephone communication
23 service, other than mobile telecommunications service as described
24 in section 77-2703.04, the gross income received from furnishing
25 local exchange telephone service and intrastate message toll
26 telephone service; and

27 (ii) In the furnishing of mobile telecommunications
28 service as described in section 77-2703.04, the gross income

1 received from furnishing mobile telecommunications service that
2 originates and terminates in the same state to a customer with a
3 place of primary use in Nebraska;

4 (b) In the furnishing of telegraph service, the gross
5 income received from the furnishing of intrastate telegraph
6 services;

7 (c) In the furnishing of gas, electricity, sewer, and
8 water service, the gross income received from the furnishing of
9 such services upon billings or statements rendered to consumers for
10 such utility services;

11 (d) In the furnishing of community antenna television
12 service, the gross income received from the furnishing of such
13 community antenna television service as regulated under sections
14 18-2201 to 18-2205 or 23-383 to 23-388; and

15 (e) The gross income received from the provision,
16 installation, construction, servicing, or removal of property used
17 in conjunction with the furnishing, installing, or connecting of
18 any public utility services specified in subdivision (8)(a) or (b)
19 of this section or community antenna television service specified
20 in subdivision (8)(d) of this section, which shall be considered
21 construction services.

22 (9) Gross receipts of every person engaged in selling,
23 leasing, or otherwise providing intellectual or entertainment
24 property means:

25 (a) In the furnishing of computer software, the gross
26 income received, including the charges for coding, punching, or
27 otherwise producing any computer software and the charges for the
28 tapes, disks, punched cards, or other properties furnished by the

1 seller; and

2 (b) In the furnishing of videotapes, movie film,
3 satellite programming, satellite programming service, and satellite
4 television signal descrambling or decoding devices, the gross
5 income received from the license, franchise, or other method
6 establishing the charge.

7 (10) Gross receipts for providing a service means+

8 ~~(a) The gross income received for building cleaning and~~
9 ~~maintenance, pest control, and security,~~

10 ~~(b) The gross income received for motor vehicle washing,~~
11 ~~waxing, towing, and painting,~~

12 ~~(c) The gross income received for computer software~~
13 ~~training,~~

14 ~~(d) The gross income received for installing and applying~~
15 ~~tangible personal property if the sale of the property is subject~~
16 ~~to tax,~~

17 ~~(e) The gross receipts received for labor by a contractor~~
18 ~~electing to be treated as a consumer of building materials under~~
19 ~~subdivision (2) or (3) of section 77-2701.10 except as provided in~~
20 ~~section 77-2704.55. For purposes of this subdivision, the gross~~
21 ~~receipts received for labor shall be sixty percent of the sales~~
22 ~~price for building materials and construction services less an~~
23 ~~allowance for sales tax paid on building materials. The allowance~~
24 ~~for sales tax paid on building materials shall equal the sales tax~~
25 ~~rate in effect at the time payment is received at the location of~~
26 ~~the project times forty percent of the sales price for building~~
27 ~~materials and construction services,~~

28 ~~(f) The gross income received for services of~~

1 recreational vehicle parks,

2 (g) The gross income received for labor for repair or
3 maintenance services performed with regard to tangible personal
4 property the sale of which would be subject to sales and use taxes,
5 excluding motor vehicles, except as otherwise provided in section
6 77-2704.26 or 77-2704.50,

7 (h) The gross income received for animal specialty
8 services except (i) veterinary services and (ii) specialty services
9 performed on livestock as defined in section 54-183, and

10 (i) The gross income received for detective services the
11 gross income received for the service.

12 (11) Gross receipts includes the sale of admissions which
13 means the right or privilege to have access to or to use a place or
14 location. When an admission to an activity is combined with the
15 solicitation of a contribution, the portion or the amount charged
16 representing the fair market price of the admission shall be
17 considered a retail sale subject to the tax imposed by section
18 77-2703. The organization conducting the activity shall determine
19 the amount properly attributable to the purchase of the privilege,
20 benefit, or other consideration in advance, and such amount shall
21 be clearly indicated on any ticket, receipt, or other evidence
22 issued in connection with the payment.

23 (12) Gross receipts includes the sale of live plants
24 incorporated into real estate except when such incorporation is
25 incidental to the transfer of an improvement upon real estate or
26 the real estate.

27 (13) Gross receipts includes the sale of any building
28 materials annexed to real estate and any construction services by a

1 person electing to be taxed as a retailer pursuant to subdivision
2 (1) of section 77-2701.10.

3 (14) Gross receipts includes the sale of prepaid
4 telephone calling arrangements and the recharge of prepaid
5 telephone calling arrangements. If the sale or recharge of a
6 prepaid telephone calling arrangement does not take place at the
7 vendor's place of business, the sale or recharge shall be
8 conclusively determined to take place at the customer's shipping
9 address or, if there is no item shipped, at the customer's billing
10 address. For purposes of this subsection, a prepaid telephone
11 calling arrangement means the right to exclusively purchase
12 telecommunications services that are paid for in advance that
13 enables the origination of calls using an access number or
14 authorization code, whether manually or electronically dialed.

15 (15) Gross receipts does not include:

16 (a) The amount of any rebate granted by a motor vehicle
17 or motorboat manufacturer or dealer at the time of sale of the
18 motor vehicle or motorboat, which rebate functions as a discount
19 from the sales price of the motor vehicle or motorboat; or

20 (b) The price of property or services returned or
21 rejected by customers when the full sales price is refunded either
22 in cash or credit.

23 (16) Subsections (7) through (15) of this section become
24 operative on January 1, 2004.

25 (17) The Tax Commissioner shall hold a hearing on rules
26 and regulations to carry out the changes made to this section by
27 Laws 2003, LB 759. It is the intent of the Legislature that the
28 Tax Commissioner adopt and promulgate rules and regulations to

1 carry out such changes.

2 Sec. 6. Section 77-2701.24, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2701.24. Occasional sale means:

5 (1) A sale, but not a lease or rental, of property which
6 is the subject of any intercompany sale or transfer involving any
7 parent, subsidiary, or brother-sister company relationship under
8 section 77-2704.28 and which was either originally acquired prior
9 to June 1, 1967, or, if acquired thereafter, the seller or
10 transferor directly or indirectly has previously paid a sales or
11 use tax thereon, including:

12 (a) From one corporation to another corporation pursuant
13 to a reorganization. For purposes of this subdivision,
14 reorganization means a statutory merger or consolidation or the
15 acquisition by a corporation of substantially all of the properties
16 of another corporation when the consideration is solely all or a
17 part of the voting stock of the acquiring corporation or of its
18 parent or subsidiary corporation;

19 (b) In connection with the winding up, dissolution, or
20 liquidation of a corporation only when there is a distribution of
21 the property of such corporation to the shareholders in kind if the
22 portion of the property so distributed to the shareholder is
23 substantially in proportion to the share of stock or securities
24 held by the shareholder;

25 (c) To a corporation for the purpose of organization of
26 such corporation or the contribution of additional capital to such
27 corporation when the former owners of the property transferred are
28 immediately after the transfer in control of the corporation and

1 the stock or securities received by each is substantially in
2 proportion to his or her interest in the property prior to the
3 transfer;

4 (d) To a partnership in the organization of such
5 partnership if the former owners of the property transferred are
6 immediately after the transfer members of such partnership and the
7 interest in the partnership received by each is substantially in
8 proportion to his or her interest in the property prior to the
9 transfer;

10 (e) From a partnership to the members thereof when made
11 in kind in the dissolution of such partnership if the portion of
12 the property so distributed to the members of the partnership is
13 substantially in proportion to the interest in the partnership held
14 by the members;

15 (f) To a limited liability company in the organization of
16 such limited liability company if the former owners of the property
17 transferred are immediately after the transfer members of such
18 limited liability company and the interest in the limited liability
19 company received by each is substantially in proportion to his or
20 her interest in the property prior to the transfer;

21 (g) From a limited liability company to the members
22 thereof when made in kind in the dissolution of such limited
23 liability company if the portion of the property so distributed to
24 the members of the limited liability company is substantially in
25 proportion to the interest in the limited liability company held by
26 the members;

27 (h) From one limited liability company to another limited
28 liability company pursuant to a reorganization; or

1 (i) Any transaction between two persons that qualifies as
2 a tax-free transaction under the Internal Revenue Code; and

3 (2) A sale of household goods, personal effects, and
4 services if each of the following conditions is met and if any one
5 condition is not met then the entire gross receipts shall be
6 subject to the tax imposed by section 77-2703.

7 (a) Such sales are by an individual at his or her
8 residence or if more than one individual's property is involved
9 such sales are by one of the individuals involved at the residence
10 of one of the individuals,

11 (b) Such sales do not occur at any residence for more
12 than three days during a calendar year,

13 (c) Such individual or individuals or any member of any
14 of their households does not conduct or engage in a trade or
15 business in which similar items are sold or services provided,

16 (d) Such property sold was originally acquired for and
17 used for personal use or the service provided may be performed at
18 any individual residence without specialized equipment or supplies,
19 and

20 (e) Such property is not otherwise excepted from the
21 definition of occasional sale,

22 (3) Commencing with any transaction occurring on or after
23 October 1, 1985, any sale of business or farm machinery and
24 equipment if each of the following conditions is met and if any one
25 condition is not met the entire gross receipts shall be subject to
26 the tax imposed by section 77-2703.

27 (a) Such machinery or equipment was used by the seller or
28 seller's predecessor in a sale described in subdivision (1) of this

1 section as a depreciable capital asset in connection with the farm
2 or business for a period of at least one year,

3 (b) Such property was originally acquired prior to June
4 1, 1967, or if acquired thereafter, the seller or seller's
5 predecessor in a sale described in subdivision (1) of this section
6 directly or indirectly has previously paid a sales or use tax
7 thereon, and

8 (c) Such property is not otherwise excepted from the
9 definition of occasional sale,

10 (4) Commencing October 1, 1985, a sale by an organization
11 created exclusively for religious purposes or an agent of the
12 organization for such sale if each of the following conditions is
13 met and if any one condition is not met then the entire gross
14 receipts shall be subject to the tax imposed by section 77-2703.

15 (a) All sales occur during an activity conducted by such
16 organization or, if more than one organization is involved, by one
17 of the organizations owning property being sold,

18 (b) The organization only sells property it owns or
19 provides the service during one such activity in a calendar year,
20 and

21 (c) The activity does not last longer than three
22 consecutive days, and

23 (5) Any sale that is made in connection with the sale to
24 a single buyer of all or substantially all of a trade or business
25 if the seller or seller's predecessor in a sale described in
26 subdivision (1) of this section directly or indirectly has
27 previously paid a sales or use tax thereon. This subdivision shall
28 apply to any transaction occurring on or after October 1, 1985.

1 Commencing October 1, 1985, occasional sale does not
2 include any sale directly by or any sale which is supervised or
3 aided by an auctioneer or an agent or employee of an auctioneer.

4 Except for a sale listed in subdivision (1) of this
5 section, an occasional sale does not mean any sale of motor
6 vehicles, trailers, and semitrailers as defined in section 60-301
7 or, on or after January 1, 1997, any sale of a motorboat as defined
8 in section 37-1204.

9 Sec. 7. Section 77-2701.32, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 77-2701.32. (1) Retailer means any seller.

12 (2) To facilitate the proper administration of the
13 Nebraska Revenue Act of 1967, the following persons have the duties
14 and responsibilities of sellers for the purposes of sales and use
15 taxes:

16 (a) Any person in the business of making sales subject to
17 tax under section 77-2703 at auction of property owned by the
18 person or others;

19 (b) Any person collecting the proceeds of the auction,
20 other than the owner of the property, together with his or her
21 principal, if any, when the person collecting the proceeds of the
22 auction is not the auctioneer or an agent or employee of the
23 auctioneer. The seller does not include the auctioneer in such
24 case;

25 (c) Every person who has elected to be considered a
26 retailer pursuant to subdivision (1) of section 77-2701.10;

27 (d) Every person operating, organizing, or promoting a
28 flea market, craft show, fair, or similar event; and

1 (e) Every person engaged in the business of providing any
2 service. ~~defined in subsection (10) of section 77-2701.16.~~

3 (3) For the proper administration of the Nebraska Revenue
4 Act of 1967, the following persons do not have the duties and
5 responsibilities of a seller for purposes of sales and use taxes:

6 (a) Any person who leases or rents films when an
7 admission tax is charged under the Nebraska Revenue Act of 1967;

8 (b) Any person who leases or rents railroad rolling stock
9 interchanged pursuant to the provisions of the federal Interstate
10 Commerce Act;

11 (c) Any person engaged in the business of furnishing
12 rooms in a facility licensed under the Health Care Facility
13 Licensure Act in which rooms, lodgings, or accommodations are
14 regularly furnished for a consideration or a facility operated by
15 an educational institution established under Chapter 79 or Chapter
16 85 in which rooms are regularly used to house students for a
17 consideration for periods in excess of thirty days; or

18 (d) Any person making sales at a flea market, craft show,
19 fair, or similar event when such person does not have a sales tax
20 permit and has arranged to pay sales taxes collected to the person
21 operating, organizing, or promoting such event.

22 Sec. 8. Section 77-2701.45, Revised Statutes Supplement,
23 2004, is amended to read:

24 77-2701.45. Construction services means annexing
25 building materials to real estate, repair of a structure, ~~as~~
26 ~~defined in section 77-2704.55,~~ or repair of building materials that
27 are or will be annexed to real estate. Construction services
28 includes installation, construction, servicing, or removal of

1 property used in conjunction with the furnishing, installing, or
2 connecting of any public utility services specified in subdivision
3 (8) (a) or (b) of section 77-2701.16 or community antenna television
4 service specified in subdivision (8) (d) of section 77-2701.16.
5 Construction services does not include the cost of the raw land or
6 finished lot, impact fees, title insurance, property insurance,
7 lender fees, closing costs, inspection fees, real estate brokerage
8 commissions and fees, or any other taxes or fees levied on the
9 transfer of property. For purposes of this section, structure
10 means any construction composed of building materials arranged and
11 fitted together in some way. Structure includes, but is not
12 limited to, streets and roadways, street lighting, and sewers and
13 waterlines.

14 Sec. 9. Section 77-2703, Revised Statutes Supplement,
15 2004, is amended to read:

16 77-2703. (1) There is hereby imposed a tax at the rate
17 provided in section 77-2701.02 upon the gross receipts from all
18 sales of tangible personal property sold at retail in this state,
19 the gross receipts of every person engaged as a public utility, as
20 a community antenna television service operator or any person
21 involved in the connecting and installing of the services defined
22 in subdivision (2) (a), (b), or (d) of section 77-2701.16 until
23 January 1, 2004, and the services defined in subdivision (8) (a),
24 (b), (d), or (e) of section 77-2701.16 beginning on January 1,
25 2004, or as a retailer of intellectual or entertainment properties
26 referred to in subsection (3) of section 77-2701.16 until January
27 1, 2004, and subsection (9) of section 77-2701.16 beginning on
28 January 1, 2004, the gross receipts from the sale of admissions in

1 this state, the gross receipts from the sale of warranties,
2 guarantees, service agreements, or maintenance agreements when the
3 items covered are subject to tax under this section, and the gross
4 receipts from the provision of services. ~~defined in subsection (4)~~
5 ~~of section 77-2701.16 until January 1, 2004, and services defined~~
6 ~~in subsection (10) of section 77-2701.16 beginning on January 1,~~
7 ~~2004.~~ Except as provided in section 77-2701.03, when there is a
8 sale, the tax shall be imposed at the rate in effect at the time
9 the gross receipts are realized under the accounting basis used by
10 the retailer to maintain his or her books and records or for a
11 contractor when the payment or payments are received for
12 construction services. For purposes of this subsection until
13 January 1, 2004, the provision of services shall be deemed to be in
14 this state for services provided to real estate if the real estate
15 is located in this state; for services provided to personal
16 property or animals if the personal property or animal is located
17 in this state and the service is rendered for use in this state;
18 for detective services under subdivision (4)(i) of section
19 77-2701.16, in the case of a customer who is an individual, if the
20 individual is residing in this state, or in the case of a business
21 customer, if the principal place of the business is located in this
22 state; and for computer software training under subdivision (4)(c)
23 of section 77-2701.16 if the training is performed at a location
24 that is within this state for a customer located within this state.

25 (a) The tax imposed by this section shall be collected by
26 the retailer from the consumer. It shall constitute a part of the
27 purchase price and until collected shall be a debt from the
28 consumer to the retailer and shall be recoverable at law in the

1 same manner as other debts. The tax required to be collected by
2 the retailer from the consumer constitutes a debt owed by the
3 retailer to this state.

4 (b) It is unlawful for any retailer to advertise, hold
5 out, or state to the public or to any customer, directly or
6 indirectly, that the tax or part thereof will be assumed or
7 absorbed by the retailer, that it will not be added to the selling,
8 renting, or leasing price of the property sold, rented, or leased,
9 or that, if added, it or any part thereof will be refunded. The
10 provisions of this subdivision shall not apply to a public utility.

11 (c) The tax required to be collected by the retailer from
12 the purchaser, unless otherwise provided by statute or by rule and
13 regulation of the Tax Commissioner, shall be displayed separately
14 from the list price, the price advertised in the premises, the
15 marked price, or other price on the sales check or other proof of
16 sales, rentals, or leases.

17 (d) For the purpose of more efficiently securing the
18 payment, collection, and accounting for the sales tax and for the
19 convenience of the retailer in collecting the sales tax, it shall
20 be the duty of the Tax Commissioner to provide a schedule or
21 schedules of the amounts to be collected from the consumer or user
22 to effectuate the computation and collection of the tax imposed by
23 the Nebraska Revenue Act of 1967. Such schedule or schedules shall
24 provide that the tax shall be collected from the consumer or user
25 uniformly on sales according to brackets based on sales prices of
26 the item or items. Retailers may compute the tax due on any
27 transaction on an item or an invoice basis. The rounding rule
28 provided in section 77-3,117 applies.

1 (e) The use of tokens or stamps for the purpose of
2 collecting or enforcing the collection of the taxes imposed in the
3 Nebraska Revenue Act of 1967 or for any other purpose in connection
4 with such taxes is prohibited.

5 (f) For the purpose of the proper administration of the
6 provisions of the Nebraska Revenue Act of 1967 and to prevent
7 evasion of the retail sales tax, it shall be presumed that all
8 gross receipts are subject to the tax until the contrary is
9 established. The burden of proving that a sale of property is not
10 a sale at retail is upon the person who makes the sale unless he or
11 she takes from the purchaser (i) a resale certificate to the effect
12 that the property is purchased for the purpose of reselling,
13 leasing, or renting it, (ii) an exemption certificate pursuant to
14 subsection (7) of section 77-2705, or (iii) a direct payment permit
15 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
16 certificate, exemption certificate, or direct payment permit shall
17 be conclusive proof for the seller that the sale was made for
18 resale or was exempt or that the tax will be paid directly to the
19 state.

20 (g) In the rental or lease of automobiles, trucks,
21 trailers, semitrailers, and truck-tractors as defined in section
22 60-301, the tax shall be collected by the lessor on the rental or
23 lease price at the tax rate in effect on the date the automobile,
24 truck, trailer, semitrailer, or truck-tractor is delivered to the
25 lessee, except as otherwise provided within this section.

26 (h) In the rental or lease of automobiles, trucks,
27 trailers, semitrailers, and truck-tractors as defined in section
28 60-301, for periods of one year or more, the lessor may elect not

1 to collect and remit the sales tax on the gross receipts and
2 instead pay a sales tax on the cost of such vehicle. If such
3 election is made, it shall be made pursuant to the following
4 conditions:

5 (i) Notice of the desire to make such election shall be
6 filed with the Tax Commissioner and shall not become effective
7 until the Tax Commissioner is satisfied that the taxpayer has
8 complied with all conditions of this subsection and all rules and
9 regulations of the Tax Commissioner;

10 (ii) Such election when made shall continue in force and
11 effect for a period of not less than two years and thereafter until
12 such time as the lessor elects to terminate the election;

13 (iii) When such election is made, it shall apply to all
14 vehicles of the lessor rented or leased for periods of one year or
15 more except vehicles to be leased to common or contract carriers
16 who provide to the lessor a valid common or contract carrier
17 exemption certificate. If the lessor rents or leases other
18 vehicles for periods of less than one year, such lessor shall
19 maintain his or her books and records and his or her accounting
20 procedure as the Tax Commissioner prescribes; and

21 (iv) The Tax Commissioner by rule and regulation shall
22 prescribe the contents and form of the notice of election, a
23 procedure for the determination of the tax base of vehicles which
24 are under an existing lease at the time such election becomes
25 effective, the method and manner for terminating such election, and
26 such other rules and regulations as may be necessary for the proper
27 administration of this subdivision.

28 (i) The tax imposed by this section on the sales of motor

1 vehicles, trailers, and semitrailers as defined in section 60-301
2 shall be the liability of the purchaser and, with the exception of
3 motor vehicles, trailers, and semitrailers registered pursuant to
4 section 60-356, the tax shall be collected by the county treasurer
5 or designated county official as provided in section 60-302 at the
6 time the purchaser makes application for the registration of the
7 motor vehicle, trailer, or semitrailer for operation upon the
8 highways of this state. The tax imposed by this section on motor
9 vehicles, trailers, and semitrailers registered pursuant to section
10 60-356 shall be collected by the Department of Motor Vehicles at
11 the time the purchaser makes application for the registration of
12 the motor vehicle, trailer, or semitrailer for operation upon the
13 highways of this state. At the time of the sale of any motor
14 vehicle, trailer, or semitrailer, the seller shall (i) state on the
15 sales invoice the dollar amount of the tax imposed under this
16 section and (ii) furnish to the purchaser a certified statement of
17 the transaction, in such form as the Tax Commissioner prescribes,
18 setting forth as a minimum the total sales price, the allowance for
19 any trade-in, and the difference between the two. The sales tax
20 due shall be computed on the difference between the total sales
21 price and the allowance for any trade-in as disclosed by such
22 certified statement. Any seller who willfully understates the
23 amount upon which the sales tax is due shall be subject to a
24 penalty of one thousand dollars. A copy of such certified
25 statement shall also be furnished to the Tax Commissioner. Any
26 seller who fails or refuses to furnish such certified statement
27 shall be guilty of a misdemeanor and shall, upon conviction
28 thereof, be punished by a fine of not less than twenty-five dollars

1 nor more than one hundred dollars. If the seller fails to state on
2 the sales invoice the dollar amount of the tax due, the purchaser
3 shall have the right and authority to rescind any agreement for
4 purchase and to declare the purchase null and void. If the
5 purchaser retains such motor vehicle, trailer, or semitrailer in
6 this state and does not register it for operation on the highways
7 of this state within thirty days of the purchase thereof, the tax
8 imposed by this section shall immediately thereafter be paid by the
9 purchaser to the county treasurer, the designated county official,
10 or the Department of Motor Vehicles. If the tax is not paid on or
11 before the thirtieth day after its purchase, the county treasurer,
12 designated county official, or Department of Motor Vehicles shall
13 also collect from the purchaser interest from the thirtieth day
14 through the date of payment and sales tax penalties as provided in
15 the Nebraska Revenue Act of 1967. The county treasurer, designated
16 county official, or Department of Motor Vehicles shall report and
17 remit the tax so collected to the Tax Commissioner by the fifteenth
18 day of the following month. The county treasurer or designated
19 county official shall deduct and withhold for the use of the county
20 general fund, from all amounts required to be collected under this
21 subsection, the collection fee permitted to be deducted by any
22 retailer collecting the sales tax. The Department of Motor
23 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
24 Division Cash Fund the collection fee permitted to be deducted by
25 any retailer collecting the sales tax. The collection fee shall be
26 forfeited if the county treasurer, designated county official, or
27 Department of Motor Vehicles violates any rule or regulation
28 pertaining to the collection of the use tax.

1 (j)(i) The tax imposed by this section on the sale of a
2 motorboat as defined in section 37-1204 shall be the liability of
3 the purchaser. The tax shall be collected by the county treasurer
4 or designated county official at the time the purchaser makes
5 application for the registration of the motorboat. At the time of
6 the sale of a motorboat, the seller shall (A) state on the sales
7 invoice the dollar amount of the tax imposed under this section and
8 (B) furnish to the purchaser a certified statement of the
9 transaction, in such form as the Tax Commissioner prescribes,
10 setting forth as a minimum the total sales price, the allowance for
11 any trade-in, and the difference between the two. The sales tax
12 due shall be computed on the difference between the total sales
13 price and the allowance for any trade-in as disclosed by such
14 certified statement. Any seller who willfully understates the
15 amount upon which the sales tax is due shall be subject to a
16 penalty of one thousand dollars. A copy of such certified
17 statement shall also be furnished to the Tax Commissioner. Any
18 seller who fails or refuses to furnish such certified statement
19 shall be guilty of a misdemeanor and shall, upon conviction
20 thereof, be punished by a fine of not less than twenty-five dollars
21 nor more than one hundred dollars. If the seller fails to state on
22 the sales invoice the dollar amount of the tax due, the purchaser
23 shall have the right and authority to rescind any agreement for
24 purchase and to declare the purchase null and void. If the
25 purchaser retains such motorboat in this state and does not
26 register it within thirty days of the purchase thereof, the tax
27 imposed by this section shall immediately thereafter be paid by the
28 purchaser to the county treasurer or designated county official.

1 If the tax is not paid on or before the thirtieth day after its
2 purchase, the county treasurer or designated county official shall
3 also collect from the purchaser interest from the thirtieth day
4 through the date of payment and sales tax penalties as provided in
5 the Nebraska Revenue Act of 1967. The county treasurer or
6 designated county official shall report and remit the tax so
7 collected to the Tax Commissioner by the fifteenth day of the
8 following month. The county treasurer or designated county
9 official shall deduct and withhold for the use of the county
10 general fund, from all amounts required to be collected under this
11 subsection, the collection fee permitted to be deducted by any
12 retailer collecting the sales tax. The collection fee shall be
13 forfeited if the county treasurer or designated county official
14 violates any rule or regulation pertaining to the collection of the
15 use tax.

16 (ii) In the rental or lease of motorboats, the tax shall
17 be collected by the lessor on the rental or lease price.

18 (k) The Tax Commissioner shall adopt and promulgate
19 necessary rules and regulations for determining the amount subject
20 to the taxes imposed by this section so as to insure that the full
21 amount of any applicable tax is paid in cases in which a sale is
22 made of which a part is subject to the taxes imposed by this
23 section and a part of which is not so subject and a separate
24 accounting is not practical or economical.

25 (2) A use tax is hereby imposed on the storage, use, or
26 other consumption in this state of property purchased, leased, or
27 rented from any retailer and on any transaction the gross receipts
28 of which are subject to tax under subsection (1) of this section on

1 or after June 1, 1967, for storage, use, or other consumption in
2 this state at the rate set as provided in subsection (1) of this
3 section on the sales price of the property or, in the case of
4 leases or rentals, of the lease or rental prices.

5 (a) Every person storing, using, or otherwise consuming
6 in this state property purchased from a retailer or leased or
7 rented from another person for such purpose shall be liable for the
8 use tax at the rate in effect when his or her liability for the use
9 tax becomes certain under the accounting basis used to maintain his
10 or her books and records. His or her liability shall not be
11 extinguished until the use tax has been paid to this state, except
12 that a receipt from a retailer engaged in business in this state or
13 from a retailer who is authorized by the Tax Commissioner, under
14 such rules and regulations as he or she may prescribe, to collect
15 the sales tax and who is, for the purposes of the Nebraska Revenue
16 Act of 1967 relating to the sales tax, regarded as a retailer
17 engaged in business in this state, which receipt is given to the
18 purchaser pursuant to subdivision (b) of this subsection, shall be
19 sufficient to relieve the purchaser from further liability for the
20 tax to which the receipt refers.

21 (b) Every retailer engaged in business in this state and
22 selling, leasing, or renting property for storage, use, or other
23 consumption in this state shall, at the time of making any sale,
24 collect any tax which may be due from the purchaser and shall give
25 to the purchaser, upon request, a receipt therefor in the manner
26 and form prescribed by the Tax Commissioner.

27 (c) The Tax Commissioner, in order to facilitate the
28 proper administration of the use tax, may designate such person or

1 persons as he or she may deem necessary to be use tax collectors
2 and delegate to such persons such authority as is necessary to
3 collect any use tax which is due and payable to the State of
4 Nebraska. The Tax Commissioner may require of all persons so
5 designated a surety bond in favor of the State of Nebraska to
6 insure against any misappropriation of state funds so collected.
7 The Tax Commissioner may require any tax official, city, county, or
8 state, to collect the use tax on behalf of the state. All persons
9 designated to or required to collect the use tax shall account for
10 such collections in the manner prescribed by the Tax Commissioner.
11 Nothing in this subdivision shall be so construed as to prevent the
12 Tax Commissioner or his or her employees from collecting any use
13 taxes due and payable to the State of Nebraska.

14 (d) All persons designated to collect the use tax and all
15 persons required to collect the use tax shall forward the total of
16 such collections to the Tax Commissioner at such time and in such
17 manner as the Tax Commissioner may prescribe. For all use taxes
18 collected prior to October 1, 2002, such collectors of the use tax
19 shall deduct and withhold from the amount of taxes collected two
20 and one-half percent of the first three thousand dollars remitted
21 each month and one-half of one percent of all amounts in excess of
22 three thousand dollars remitted each month as reimbursement for the
23 cost of collecting the tax. For use taxes collected on and after
24 October 1, 2002, such collectors of the use tax shall deduct and
25 withhold from the amount of taxes collected two and one-half
26 percent of the first three thousand dollars remitted each month as
27 reimbursement for the cost of collecting the tax. Any such
28 deduction shall be forfeited to the State of Nebraska if such

1 collector violates any rule, regulation, or directive of the Tax
2 Commissioner.

3 (e) For the purpose of the proper administration of the
4 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
5 it shall be presumed that property sold, leased, or rented by any
6 person for delivery in this state is sold, leased, or rented for
7 storage, use, or other consumption in this state until the contrary
8 is established. The burden of proving the contrary is upon the
9 person who purchases, leases, or rents the property.

10 (f) For the purpose of the proper administration of the
11 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
12 for the sale of property to an advertising agency which purchases
13 the property as an agent for a disclosed or undisclosed principal,
14 the advertising agency is and remains liable for the sales and use
15 tax on the purchase the same as if the principal had made the
16 purchase directly.

17 Sec. 10. Section 77-2704.26, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2704.26. Sales and use taxes shall not be imposed on
20 the gross receipts from the sale, lease, or rental of and the
21 storage, use, or other consumption in this state of an aircraft
22 delivered in this state to an individual who is a resident of
23 another state or any other person who has a business location in
24 another state when the aircraft is not to be registered or based in
25 this state and it will not remain in this state more than ten days.
26 Sales and use taxes shall not be imposed on the gross receipts from
27 a service listed in subsection (10) of section 77-2701.16 that is
28 rendered to an aircraft brought into this state by an individual

1 who is a resident of another state or any other person who has a
2 business location in another state when the aircraft is not to be
3 registered or based in this state and it will not remain in this
4 state more than ten days after the service is completed.

5 Sec. 11. Section 77-2704.30, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-2704.30. The use tax imposed in the Nebraska Revenue
8 Act of 1967 shall not apply to:

9 ~~(1) The use in this state of materials and replacement~~
10 ~~parts which are acquired outside this state and which are moved~~
11 ~~into this state for use directly in the repair, installation, or~~
12 ~~application and maintenance or manufacture of motor vehicles,~~
13 ~~watercraft, railroad rolling stock, whether owned by a railroad or~~
14 ~~by any person, whether a common or contract carrier or otherwise,~~
15 ~~or aircraft engaged as common or contract carriers, and~~

16 ~~(2) The the storage, use, or consumption of property~~
17 ~~which is acquired outside this state, the sale, lease, or rental or~~
18 ~~the storage, use, or consumption of which property and any~~
19 ~~associated labor or service would be exempt from the sales or use~~
20 ~~tax were it purchased within this state.~~

21 Sec. 12. Section 77-2704.46, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-2704.46. Sales and use taxes shall not be imposed on
24 the gross receipts from the sale, lease, or rental of and the
25 storage, use, or other consumption in this state of:

26 (1) Any form of animal life of a kind the products of
27 which ordinarily constitute food for human consumption. Animal
28 life includes live poultry or livestock on the hoof when sales are

1 made by the grower, producer, feeder, or any person engaged in the
2 business of bartering, buying, or selling live poultry or livestock
3 on the hoof; and

4 (2) Seeds and annual plants, the products of which
5 ordinarily constitute food for human consumption and which seeds
6 and annual plants are sold to commercial producers of such
7 products, and seed legumes, seed grasses, and seed grains when sold
8 to be used exclusively for agricultural purposes. +

9 ~~(3) Agricultural chemicals, adjuvants, surfactants,~~
10 ~~bonding agents, clays, oils, and any other additives or~~
11 ~~compatibility agents for use in commercial agriculture and applied~~
12 ~~to land or crops and sold in any tax period that has not been~~
13 ~~closed by the applicable statute of limitations. Agricultural~~
14 ~~chemicals does not mean chemicals, adjuvants, surfactants, bonding~~
15 ~~agents, clays, oils, and any other additives or compatibility~~
16 ~~agents applied to harvested grains stored in commercial elevators,~~
17 ~~or~~

18 ~~(4) Oxygen for use in aquaculture as defined in section~~
19 ~~2-3804.01.~~

20 Sec. 13. Sales and use taxes shall not be imposed on the
21 gross receipts from the sale, lease, or rental of and the storage,
22 use, or other consumption in this state of health care services.
23 For purposes of this section, health care services means providing
24 care or treatment for the purpose of maintaining or improving the
25 health of humans. Health care services shall include, but not be
26 limited to, the services performed by any person or institution
27 licensed under Chapter 71.

28 Sec. 14. This act becomes operative on January 1, 2006.

1 Sec. 15. Original sections 77-2701.02, 77-2701.24,
2 77-2701.32, 77-2704.26, 77-2704.30, and 77-2704.46, Reissue Revised
3 Statutes of Nebraska, and sections 77-2701, 77-2701.04, 77-2701.10,
4 77-2701.16, 77-2701.45, and 77-2703, Revised Statutes Supplement,
5 2004, are repealed.

6 Sec. 16. The following sections are outright repealed:
7 Sections 77-2704.03, 77-2704.04, 77-2704.07, 77-2704.10,
8 77-2704.13, 77-2704.14, 77-2704.16, 77-2704.17, 77-2704.19,
9 77-2704.20, 77-2704.23, 77-2704.25, 77-2704.27, 77-2704.38,
10 77-2704.40, and 77-2704.50, Reissue Revised Statutes of Nebraska,
11 and sections 77-2704.12, 77-2704.15, 77-2704.36, 77-2704.37, and
12 77-2704.55, Revised Statutes Supplement, 2004.